

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: H.F.

Date of Birth: [redacted]

Date of Hearing:

May 10, 2012

CLOSED HEARING

ODR Case # 3035-1112KE

Parties to the Hearing:

Parent

Pittsburgh School District
341 South Bellefield Avenue
Pittsburgh, PA 15213

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

Jocelyn P. Kramer, Esquire
Law Offices of Ira Weiss
445 Fort Pitt Blvd., Suite 503
Pittsburgh, PA 15219

May 15, 2012

June 7, 2012

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student¹ is a [late teen-age] student residing in the Pittsburgh School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and Pennsylvania special education regulations (“Chapter 14”).² Specifically, the student has been identified with an emotional disturbance.

Parent asserts that the student was denied a free appropriate public education (“FAPE”), due to the District’s failure to meet its obligations under IDEIA and Chapter 14 to provide special education and related services for a specific time period during the 2011-12 school year when the student was excluded from school.

The District counters that the exclusion was based upon miscommunications, was unintentional, and did not constitute a change of placement for the student resulting in a denial of FAPE.

For the reasons set forth below, I find in favor of the parent.

¹ The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

² It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.164.

ISSUES

Did the District fail to provide the student with a FAPE, as required by IDEIA, for a time period during the 2011-12 school year?

If so, is the student entitled to compensatory education?

FINDINGS OF FACT

1. The student is eligible for special education under the IDEIA based on identification as a student with an emotional disturbance. (School District Exhibit ["S"]-4).
2. During the 2010-11 school year, the student was in full time emotional support at a program operated in a District high school pursuant to an individualized education program ["IEP"]. (Notes of Testimony ["NT"] at 168-69; S-1).
3. At the beginning of the 2011-12 school year, the student was provided with supplemental emotional support at the same District high school. The District did not, during that school year, have full-time emotional support available at the high school the student was attending. (NT at 66, 83-84).
4. In December 2011, the District obtained permission to re-evaluate the student, and subsequently issued a reevaluation report ["RR"]. The District mailed parent's copy of the RR to her. (NT at 67-68, 192-93; Hearing Officer Exhibit ["HO"]-1; S-2, S-3, S-4).
5. In January 2012 following completion of the RR, the student's IEP team convened to discuss the RR and develop an IEP. Parent was not able to attend that meeting. School-based members of the IEP team discussed the student's current placement in supplemental emotional support, as well as an increase in services to full-time emotional support. (NT at 69, 72-73, 76, 79-84; S-5).
6. Within a day or two of the January 2012 IEP team meeting, the student's special education case manager and a transition counselor went to parent's home to review the RR and January 2012 IEP. The IEP specified supplemental emotional support for the student's program. (NT at 76-77, 79, 88-89, 91, 102-03; S-6).

7. No member of the student's IEP team discussed with parent any possible change in placement for the student in January 2012, including an increase to full-time emotional support, and Parent was not aware that such a change was being considered. (NT at 33-35, 47-48, 102).
8. The notice of recommended educational placement ["NOREP"] issued by the District in January 2012 provides for supplemental emotional support. The location of the services is not specified in the NOREP. On January 13, 2012, the parent approved the NOREP for supplemental emotional support. (S-7).
9. At some time following the January 2012 IEP meeting, high school personnel made a referral to the District's central office special education operations to initiate a change in the student's placement to another school within the District ["other school"]. In such circumstances, the high school does not issue a new NOREP; instead, the other school issues a new NOREP for the proposed change-in-placement. (NT at 81, 105, 117, 171-72, 177).
10. In early March 2012, the District's central office special education operations made contact with the other school to consider the student's enrollment. The high school principal thereafter received notice that the other school had made contact with parent. (NT at 127; S-9).
11. On the afternoon of March 16, 2012, the student was involved in an incident at the high school with another student. The principal was surprised to see the student at the high school and sent the student home, telling the student not to return to the high school. (NT at 24-25, 120-21, 128).
12. On March 22, 2012, the student went to the high school and attempted to speak with the principal, who called security. The security officer issued a citation to the student for trespass. (NT at 25, 41, 126, 129-30; Parent's Exhibit ["P"]-1).
13. The day after the March 22, 2012 incident, parent called the principal and left a message. The principal returned parent's call on March 26, 2012 and advised parent, for the first time, that the District was undertaking a change in the student's placement to the other school. (NT at 25-26, 130-31).

14. Parent went to the high school to meet with school personnel on March 30, 2012, at which time parent was presented with a NOREP for full-time emotional support at the other school. Parent refused to sign the NOREP. (NT at 29-30).
15. Building-level personnel at the District do not receive explicit notice when a student who is referred to another placement has had that placement changed. Instead, such students' names are simply removed from the referring school's rolls, and the referring school's personnel discover the placement change on a "hit or miss" basis. The District high school principal did not follow up to ascertain whether a change in the student's placement to the other school had been finalized. (NT at 118-20, 159-62, 164-65)
16. The student's special education case manager believed that the student was absent from the high school between March 16 and 30, 2012, and the student remained on the high school rolls throughout that time period. (NT at 97-98)
17. An IEP meeting convened on April 2, 2012, the first day of spring break week. The IEP team discussed a change in the student's placement to full-time emotional support at the other school. Parent did not agree to a proposal for full-time emotional support, and the IEP team instead agreed that the student would return to the supplemental emotional support placement at the high school on April 9, 2012, following spring break. The student returned to the high school on April 9th. (NT at 84-85, 133-35, 146; S-10)
18. Because of the District's spring break, there were ten school days between March 16, 2012 and April 9, 2012. (S-15).³

DISCUSSION AND CONCLUSIONS OF LAW

Provision of FAPE

To assure that an eligible child receives a FAPE (34 C.F.R. §300.17), a school district must provide a program that is reasonably

³ The District calendar notes an early dismissal on March 30, 2012; however, there is no evidence in the record from which to determine the amount of the student's instructional time, if any, that was impacted by this early dismissal.

calculated to yield meaningful educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982). “Meaningful benefit” means that a student’s program affords the student the opportunity for “significant learning” (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)).

In this case, there is no question that the student was denied access to school from the time the high school principal told the student to leave the building on the afternoon of March 16, 2012, and continuing through the student’s return on April 9, 2012. (FF 11, 12, 13, 17, 18). Thus, the student was denied FAPE. At the time the student was prevented from attending the high school, there had been no determination by the IEP team, which included the student’s parent, that a change in placement was necessary to provide the student with FAPE. (FF 5, 7, 8). On the contrary, parent had no idea on March 16, 2012, or on March 22, 2012, that anyone in the District had even contemplated a change in the student’s placement, much less initiated the process of referring the student to another school. (FF 7, 8, 13). It is difficult to imagine a more clear example of a denial of FAPE than a total exclusion from the school premises.

Furthermore, due to apparent misunderstandings and incomplete paperwork at the District, the District issued a citation to the student for trespassing at the very school building where the parent and student clearly understood the student should be attending (FF 5, 6, 7, 8, 12,

13); this cannot be viewed as reasonable or appropriate. It is not the obligation of parents or students to ascertain whether a change in placement has been made, particularly when there was no reason for them to suspect any such change had been discussed or initiated. Moreover, the belief of certain District high school personnel that the process of making that change in the student's placement was well underway does nothing to cure the clear denial of FAPE, nor does the existence of questionable District procedures for accomplishing changes in placement excuse the deprivation. (FF 7, 9, 10, 15, 16).

Accordingly, compensatory education will be awarded.

Compensatory Education

Where a school district has denied a student a FAPE under the terms of the IDEIA, compensatory education is an equitable remedy that is available to a claimant when a school district has been found to have denied a student FAPE under the terms of the IDEIA. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)). The U.S Court of Appeals for the Third Circuit has held that a student who is denied FAPE "is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem." (M.C. v. Central Regional School District,

81 F.3d 389, 397 (3rd Cir. 1996). Here, equity does not suggest any reasonable rectification period.

This hearing officer concludes that the right to compensatory education began to accrue on the afternoon of March 16, 2012, when the student was told to leave the high school, and that the District knew that the student was or would be deprived of FAPE as of that moment. The denial of FAPE continued until the day the student was permitted to return to the District high school, or April 9, 2012. Accordingly, the student will be awarded full days of compensatory education for every day that school was in session during the time period in question, March 16, 2012 through April 9, 2012, a period of ten school days.⁴ (FF 18).

As for the nature of the compensatory education award, parent may decide in her sole discretion how the hours should be spent so long as they take the form of appropriate developmental, remedial or enriching instruction or services that further the goals of the student's current or future IEPs. These hours must be in addition to the then-current IEP and may not be used to supplant the IEP. These hours may occur after school, on weekends and/or during the summer months, when convenient for the student and the family, and may be used until the student turns 21 years of age.

There are financial limits on the parent's discretion in selecting the appropriate developmental, remedial or enriching instruction that

⁴ A full day of compensatory education amounts to 5.5 hours for a secondary level student. See 22 PA Code §11.3.

further the goals of the student's IEPs. The costs to the District of providing the awarded hours of compensatory education must not exceed the full cost of the services that were denied. Full costs are the hourly salaries and fringe benefits that would have been paid to the District professionals who provided services to the student during the period of the denial of FAPE.

An award of compensatory education will be fashioned accordingly.

CONCLUSION

The District denied the student a FAPE for its failure to provide an appropriate program for the student during the time period that the student was excluded from school. The student is entitled to compensatory education.

•

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student was denied a free appropriate public education. The student is entitled to compensatory education in an amount equal to 5.5 hours for every school day that the student was excluded from school beginning on March 19, 2012 through April 9, 2012, or ten school days.

Any claim not specifically addressed in this decision and order is denied.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

June 7, 2012